**HONOURABLE MS JUSTICE G. ROHINI**

**WRIT PETITION No. 14576 of 2007**

**Dated 11th July 2007**

**Between:**

M/s. Clean Tech Water Filters,
Balram Compound Colony,
Padmaraonagar,
Secunderabad rep by its prop M.Venkata Krishna.

.....Petitioner

and

The Punjab National Bank, Saifabad Branch
Rep by its Branch Manager,
Sayeed Plaza, Lakdikapool, Hyderabad and others.

.....Respondents.

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**ORDER:**

This Writ Petition is filed seeking a declaration that the sale notice dated 14.5.2007 issued by the second respondent proposing to conduct public auction for sale of the land to an extent of 15 acers in Sy.Nos.356/2 and 358/1 at Tirupathi under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), as arbitrary and illegal.

The petitioner company does not dispute the fact that they had obtained a loan from the first respondent bank by mortgaging the immovable property in question as security. It is also not in dispute that the petitioner failed to maintain the loan account regularly. In the circumstances, the 1st respondent bank issued a notice calling upon the petitioner to clear the bank dues within

seven days and since the petitioner failed to comply with the same, the 1st respondent bank having invoked the provisions of the Act, issued a demand notice under Section 13 (2) of the Act. Questioning the same, the petitioner filed W.P.No.14278 of 2007, during the pendency of which there was an interim direction that the respondent bank may proceed with the impugned notice in accordance with land but will not part with the petitioner's assets by way of lease, assignment or sale and will not create any third party interest with the assets of the petitioner. Subsequently, the said Writ Petition was disposed of. Thereafter, the respondents have taken the possession of the mortgaged property and issued the impugned sale notice published in the local daily, pursuant to which the auction was conducted and the 3rd respondent herein was declared as the successful bidder.

The said action of the respondents is challenged in this Writ Petition contending *inter alia* that the impugned sale is not in accordance with the provisions of Rule 8 (5) of the Rules made under the Act. It is also alleged that the 2nd respondent has colluded with the third respondent with a malafide intention to defeat the valuable rights of

the petitioner. It is alleged that the respondents 1 and 2 failed to obtain the valuation of the property from an approved valuer as required under Rule 8 (5) of the Rules before fixing the reserve price of the property in question.

It is contended that as per the assessment made by the Office of Sub Registrar, Renigunta, the market value of the property is Rs.95,83,200/-, whereas, the reserve price was shown only as Rs.35 lakh in the auction notice. Though the said fact was brought to the notice of the respondents 1 and 2, the objection raised by the petitioner was not considered. Hence, it is contended that the entire sale proceeding being in violation of the statutory provisions are liable to be set aside.

I have heard the learned counsel for the petitioner and perused the material on record.

It is true that the Rule 8 (5) of the Rules requires that the valuation of the property shall be obtained from an approved valuer before affecting the sale of the immovable property. However, whether such procedure has been followed or not and whether the impugned auction of the respondents 1 and 2 is not in conformity with the statutory rules is a pure question of fact, which cannot be enquired into and decided in a writ proceeding.

Even assuming that the respondents 1 and 2 failed to follow the requirements under the statutory rules, in case the petitioner is aggrieved, it is for him to work out the remedy as provided under Section 17 of the Act by making an application before the Debts Recovery Tribunal having jurisdiction in the matter. It is also relevant to note that after examining the facts and circumstances of the case, and evidence that may be produced by the parties, if the Tribunal comes to a conclusion that the steps taken by the secured creditor are not in accordance with the provisions of the Act and the Rules made there under, the Tribunal is competent even to direct restoration of the possession of the secured assets to the borrower.

Without exhausting such an efficacious alternative remedy available under the statute the petitioner cannot maintain this Writ Petition under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the remedy as provided under Section 17 of the Act. No costs.

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***(G.ROHINI, J)***

**Dated: 11th July 2007**
mrb